IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 2319 of 1998

Date of decision: 29-7-1998

For Approval and Signature

The Hon'ble Mr. Justice S. K. KESHOT

1. Whether Reporters of Local papers may be allowed to see the judgment?

2. To be referred to the Reporter or not?

3. Whether their Lordships wish to see the fair copy of the judgment?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India,1950 or any order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

SAVITABEN KANTILAL PATEL DECD.THRO'HEIRS DECD.KANTILAL & 5

Versus

AHMEDABAD MUNICIPAL CORPORATION

Appearance:

MR VM DHOTRE for Petitioners

MR Mrugesh for Respondent

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 29/07/98

ORAL JUDGEMENT

This first appeal is directed against the judgment and decree of the City Civil Court at Ahmedabad dated 30th March, 1998 in Civil Suit No.1670 of 1982, by which the suit filed by the appellants has been dismissed. Since Smt. Savitaben Kantilal Patel has died, she is now represented by her heirs and legal representatives. The brief facts of the case are that the plaintiff-appellant filed the suit, out of which this appeal has arisen, against the respondent-defendant Ahmedabad Municipal Corporation , seeking permanent injunction in the form of relief as prayed for in para 6(A) of the plaint. The plaintiffs claimed themselves to be absolute owner of the property situated in Ahmedabad at village Rakhial, bearing Revenue Survey No.464/A, admeasuring 64 gunthas, more particularly described in para 1 of the plaint at Exh.1. They purchased this property through registered sale deed dated 22-4-1971. The plaintiffs are residing in the suit property and the place of their business and godown are also situated therein. Over and above that, approximately 11 to 12 tenants are having their office and residence therein.

2. The Estate Officer of the defendant- respondent had issued notices through Javak No.ETS.TPS.16-161 under section 54 of the Town Planning Act, 1954 and Rule 27-B of the Town Planning Rules to some of the tenants and the previous landlord Pari Chhotalal Damodardas ni Pedhi and its partners. No notice has been issued on the plaintiff Savitaben K. Patel, who expired pending the suit. So the defendant has no right to act upon against the plaintiff. He further alleged that the respondent-defendant has not given information to Savitaben K. Patel that the said property has been acquired under the T.P.Scheme No.16 and that the said property vested in the defendant Corporation. Late Savitaben K. Patel had issued notice and filed civil suit No.2947 of 1977 against the defendant - respondent and when it came up for final hearing the same was withdrawn with permission to file fresh suit as the same was likely to fail on technical ground. Thereafter, what the appellant-plaintiff alleged is that no action has been taken by the respondent-defendant. So no cause of action has arisen to the plaintiff Savitaben K. Patel for filing the suit. Therefore the present suit has been filed on the ground that some of defendant's officer had threatened to snatch away possession and demolish the construction.

3. The defendant Corporation put appearance in the suit and had filed its written statement at Exh.9. In the written statement it has come up with the defence that in the T.P.S. record Nanalal Vanmalidas and Ranchhodlal Damodardas as Vahivat-karta of Chhotalal Damodardas were shown as the owners of the land bearing revenue Survey No.464/A, and the respondent-defendant as local authority had made declaration to make T.P.S. No.16 Saherkotda on 19th July, 1951 under the provisions of the Bombay Town Planning Act of 1915. During the course of the T.P.S., that Town Planning Act was repealed by Bombay Town Planning Act, 1954. The land bearing SurveyNo.464/1 was given O.P. No.21. By virtue of the said T.P.S., O.P. came to be reconstituted and the some portion of the northern side of that O.P. was taken up for T.P.S. road and the remaining land was reserved for garden, i.e. for public purpose. The State of Gujarat had issued notification on 10th June, 1970 under the T.P.Act, 1954 and the said scheme came into force with effect from 1-9-1970. After finalisation and sanction of the scheme, the plaintiff and the occupiers are not entitled to retain possession of the part of the land forming part of O.P.No.21, as on finalisation of the scheme the property has vested in local authority for the town planning scheme road , ie., street as well as for garden, i.e. public purpose. After the scheme cane into force the Estate Department of the respondent-defendant had issued notice dated 21st August, 1972 to the owners of the land and occupiers of the land under section 54 of the T.P.Act, 1954 read with Rule 27 of the T.P. Rules and the same was served upon them on 30th June, 1973. The owner of the land was also informed about the fact of T.P.S. under section 53 of the T.P.Act. The owners were informed to remain present on the suit land on 12-11-1970 so that the Town Planning Officer would show the boundaries fixed by them and also inform them about the scheme sanctioned by the Government, which has come into force with effect from 1-9-1970, and also inform about the result of the scheme. At the relevant time there were about 12 occupiers, and all the occupiers were served with notice under section 54 of the T.P.Act read with Rule 27 of the T.P.Rules. Sketch of the land occupied by each of the occupiers is also shown on the reverse portion of the notice in yellow colour. Revenue survey number and O.P. numbers were also shown. Final plot number had not been given because it is a road and public place. At the relevant time, the defendant -respondent had come up with the case that the deceased plaintiff Savitaben Kantilal Patel was not owner of the land, but her husband was in occupation of the premises in the name and style of Bharat Transport. Her husband

was served with notice on 11-7-1973. From the record it was found that Kantilal Dahyabhai was doing the business in the name of Bharat Transport and was in occupation of shop No.5. As the land was purchased by the plaintiff on 24th April, 1971 it was not necessary for the defendant respondent to serve notice to the plaintiff. Deceased plaintiff was not in occupation of any part of the land on the date of declaration and during the course of T.P.Scheme and on the date on which the said scheme came into force. O.P. 21 is vested in defendant respondent free from all encumbrances. The plaintiff has no right or interest whatsoever in the land in dispute because s he had purchased the property after the scheme has been sanctioned. Before purchasing the property what was the nature, it was obligatory on the part of the plaintiff to make inquiry and if she has purchased the property without making enquiry, now she cannot find fault with the defendant. The plaintiff filed earlier suit No.2483/73 on 15-6-1973. Knowing that the suit is likely to be dismissed she has withdrawn the suit on 26th July, 1977 and then she filed the present suit in the year 1977. Occupiers were given this notice and to challenge that notice on the same ground the plaintiff filed suit No.29/77, and that has also been withdrawn on 31st July, 1980 with permission to file fresh suit on the same cause of action which was granted. The defendant respondent postponed the execution for some time because 11 persons were residing there and time to find out alternative accommodation was given, and in the meanwhile the plaintiff filed the present suit on 6-5-1982. On the basis of the pleadings of the parties the learned trial Judge framed as many as 7 issues in the such which are as under:

"1. Whether the plaintiff proves that the notice issued by the defendant corporation under section 54 of the Town Planning Act bearing No.16 of 1961 is illegal, arbitrary, without authority and hence not binding to the plaintiff?

2. Whether the plaintiff proves that the procedure adopted by the defendant for acquisition of the suit property for want of proper intimation to the present plaintiff is illegal and hence not binding to the plaintiff?

3. Whether the suit is maintainable ?

4. Whether the defendant proves that by virtue of the provisions of the Town Planning act the Town Planning Scheme is finalised and hence they

have become the absolute owner of the suit property from all encumbrances?

5. Whether the plaintiff is entitled to the relief of declaration as prayed for?

6. Whether the suit is barred by limitation?

7. What order and decree ?

Issues No.1, 2 and 3 were decided against the plaintiff appellant. Issues No.5 and 6 were also decided against the plaintiff. So far as issue No.4 is concerned, it has been held by the trial court that it does not survive. Hence this appeal before this court.

4. Learned counsel for the appellant raised only contention that as the deceased plaintiff has purchased the property in dispute notice should have been given to her under section 54 of the Act. Ancillary contention is also made that the plaintiff- appellant was in possession of the suit land much earlier to the execution of the sale deed. So otherwise also as the plaintiff deceased was in occupation of the land in dispute notice under section 54(2) of the Act was required to be given to her by the defendant respondent. On the other hand counsel for the respondent supported the judgment of the court below.

5. Learned counsel for the appellants does not dispute that after finalization of the T.P.Scheme the land stood vested in the respondent free from all encumbrances. This court has, time and again, during the course of argument put a question to the counsel for the appelant as to what useful purpose would be served in case the notice was given to the deceased plaintiff, and further what prejudice would have been caused to the plaintiff for want of such notice. The court has further put question to the learned counsel for appellant that he may make out a case as if it has to be made in the reply to the notice. Learned counsel for the appellant is unable to show what reply to the show cause notice could have been filed. Only reply is that she would have been in a better position than to raise the contentions which have been raised in the civil suit. He is also unable to show that the remedy before the authorities would have been better than what the remedy availed by the plaintiff by filing the suit.

6. From the facts stated above I am of the considered opinion that the plaintiff-appellants are challenging the judgment and decree of the lower court wholly on

technical ground. One more fact I find is that the plaintiffappellant has made use of judicial forum for delaying recovery of possession of the land in dispute by the defendant- respondent. The land in dispute has been purchased by the deceased plaintiff much after the T.P.Scheme was finalised. The court below has rightly observed that the plaintiff-appellant has no right whatsoever to purchase this land and the sale is of no effect. By this sale deed, the court below has rightly observed, no right or interest is created in favour of the deceased plaintiff. This sale deed is nothing but a document which has been created by the deceased plaintiff with the clear object and purpose of retaining the property. The oblique motive is established from the fact that the plaintiff has files suits in succession first Civil Suit No.2483/73 on 15-6-1973 which was withdrawn on 26th July, 1977 when it was fixed for argument. Then the second suit was filed, being Civil Suit No.2974/77 and that was also withdrawn on 31-7-1980. It is true that the liberty was granted by the court for filing fresh suit. But it cannot be ignored or this court cannot be oblivious of the fact that the challenge in both the aforesaid suits was action of the respondents on the same ground, and the challenge made in the present suit out of which this first appeal has arises is also the same. The husband of the deceased plaintiff was in possession of the some portion of the property reserved for road and garden; and rightly it can be said that the sale deed appears to be only an attempt by the husband in the name of his wife to grab the land which is in the T.P.Scheme for the purpose of road, garden, etc., The present case is clearly an example how unscrupulous people can defeat the very object and purpose of T.P. Scheme, by filing successive suits, knowing well that there is no merits in the matter. This technical plea, leaving apart that the same has no merits, should not have been given such a long life to the litigation. When the deceased plaintiff had no right , the sale deed does not confirm any right , title and interest in the land for the reason that the sale deed is of the date after the T.P.Scheme has been finalised, then what purpose would have been served even if any notice would have been given under section 54 of the Act to the deceased plaintiff.

7. Now I am advert to another contention of the plaintiff appellant that she was in possession much earlier to the date of the sale deed. In the sale deed Exh.73 it is there what the learned trial court found; it is averred that this property was in possession of the vendee earlier to the sale deed. Much emphasis has been

laid by the learned counsel for the appellant on this recital, and he contended that the sale deed may not be of any value or worth or would not have conferred any right or interest in the land to the deceased plaintiff but as she is occupier in this land a notice has to be given to her by the defendant. I do not find any merit in this contention for the obvious reason that recital in the sale deed is of no consequence and of no worth as it is an admission which is made or which is got by the deceased plaintiff in her own favour by the vendor. Defendant respondent was not party to the sale deed. Looking to the fact that the sale deed has been executed after finalisation of the T.P.Scheme, naturally it can be said that it was made purposely to make out such ground or to make the same as evidence in her favour. This recital, otherwise, is legally not binding also on the defendant respondent. Be that as it may.

8. The learned trial court has rightly observed that irrespective of whatever worth may be the recital in the sale deed and its evidential value, nature of her possession has not been made clear in the sale deed. The learned trial court has also found as a fact that the deceased plaintiff was not actually residing in the disputed property. The court further noticed very important fact that though the plaintiff has stated in the plaint that she is residing in the suit premises, her address given in the plaint has not been of the suit property. Documentary evidence produced by the plaintiff- appellant has also been discussed by the trial court. This documentary evidence relates to the period from 1976-77 to 1983. The same are of little value and worth. By this documentary evidence, how it can be said, what to say to believe , that the plaintiff-appellant was in possession of the suit property earlier to the date of the sale deed. The trial court has rightly noticed that on the record of the suit the plaintiff could not produce any document to show that she was having her possession of the suit property during the year 1962. to 1975. She could have produced documents like ration card, electricity bill etc., but that evidence was also not produced on record. The trial court has also considered the document Exh.73. The owner of the suit property ceased to have any right, title or interest thereon from 1-9-70 as it had vested in the defendant-respondent. On 12-11-1970 the owner of the property refused to hand over possession thereof to the defendant respondent. The owner of the property has executed the document of sale deed as they got the amount much more than what they would have received from the defendant. The very facts which have come on record and particularly with reference

to the fact that the husband of the plaintiff was in possession of the other part of the property of which the disputed property is one of the part, he has taken this property in the name of his wife to thwart the object and purpose of T.P.Scheme and grabbing of the property which was reserved for public purpose under the T.P.Scheme.

9. Learned counsel for the appellant has failed to make out any case of right, title or interest of the plaintiff - appellant in the suit property. The learned trial court has not committed any illegality in not granting the prayer made in the suit filed by the plaintiff. The suit has rightly been dismissed by the court below. Interference of this court in this matter is not called for. In such matters the court should have taken stricter view and should not have allowed unscrupulous persons to frustrate the T.P.Scheme by adopting such tactics.

10. In the result this appeal fails and the same is dismissed with costs to the respondents which is assessed at Rs.2500/-, as what the learned counsel for the respondent stated is paid by the Corporation to him.

.....

csm